

APPEAL NO. 031443
FILED JULY 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 12, 2002, and continued with the record closing on May 6, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th, 11th, and 12th quarters, and that the compensable injury of _____, does not extend to and include the thoracic spine, right wrist, right shoulder, or right arm. The claimant appealed, arguing that the hearing officer's SIBs and extent-of-injury determinations are against the great weight and preponderance of the evidence. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed, as reformed.

At the outset, we note the hearing officer's Finding of Fact No. 1 appears to have omitted two stipulations made by the parties. We reform the hearing officer's Finding of Fact No. 1 to read as follows: "J. The qualifying period for the 12th quarter was September 3, 2002, through December 2, 2002" and "K. The 12th quarter is from December 16, 2002, through March 16, 2003."

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(e). The qualifying periods for the SIBs quarters in issue were as follows: for the 10th quarter, March 3 through June 2, 2002; for the 11th quarter, June 3 through September 2, 2002; and for the 12th quarter, September 3 through December 2, 2002.

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period was a fact question for the hearing officer to determine from the evidence presented. The hearing officer determined that the claimant did not meet the requirements of the Rule 130.102(e) due to a lack of job searches every week of the qualifying period for the 11th quarter. The hearing officer was not persuaded by the claimant's testimony that that the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the 10th and 12th quarters. The hearing officer

commented that the claimant had documented job searches merely to maintain entitlement to SIBs. The hearing officer commented that the claimant's job search documentation appeared to be a minimal effort only to be entitled to SIBs, thus the claimant had not shown a good faith effort to obtain employment commensurate with his ability to work for the 10th and 12th quarters of SIBs. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include the thoracic spine, right wrist, right shoulder, and right arm. Extent of injury is a question of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer's decision and order are affirmed, as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge